

INTERIM GUIDELINES FOR "EQUITABLE RELIEF" FOR INNOCENT SPOUSES

WASHINGTON -- The Treasury Department and the Internal Revenue Service have issued interim guidance for taxpayers seeking relief under a new provision in the 1998 IRS Restructuring and Reform Act. Treasury and the IRS also want feedback to help them develop final guidance, with comments due by April 30, 1999.

"This is one more step in our implementation of the new innocent spouse provisions, which is one of my top priorities," said IRS Commissioner Charles O. Rossotti. "Later this month we expect to finalize both the form taxpayers will use to apply for relief as well as a revised publication on this important subject. The taxpayers affected have been among the nation's most vulnerable and will benefit significantly from the enhanced relief the restructuring legislation gave them."

The IRS will use this interim guidance to process requests that it had suspended since the Restructuring Act was passed in July. The IRS suspended action so that it could consider granting this relief for taxpayers who otherwise would have been denied relief because they did not meet other provisions in the law. There are currently about 2,000 such requests pending. In a separate action, the National Taxpayer Advocate issued the first Taxpayer Advocate Directive, ordering the abatement of penalties in certain circumstances for claims filed prior to December 7, 1998.

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“This is an important step that provides new avenues of relief in extraordinary situations to married or formerly married taxpayers,” said Treasury Deputy Secretary Lawrence Summers.

The interim guidance deals with a new remedy called “equitable relief.”

When a married couple files a tax return jointly, each spouse is fully liable for any taxes owed, including any additional assessments that may result after an audit. Two provisions in the law offer relief to a spouse who did not know about erroneous items that caused the extra tax (“traditional relief”), and to a divorced or separated person to the extent an additional tax is allocable to the other spouse (“separate liability”).

Equitable relief may be appropriate when a person does not qualify under these “traditional relief” or “separate liability” provisions. For example, equitable relief may be granted when one spouse did not know that the other spouse took the money intended for paying the tax and used it for his or her own benefit instead.

The interim guidance lists threshold conditions for equitable relief consideration, circumstances where equitable relief will normally be granted, and additional factors to be taken into account when determining whether or not to grant equitable relief in other circumstances.

To be considered for equitable relief, a person must meet several threshold conditions, generally including filing a joint return, failing to qualify for the “traditional relief” or “separate liability” relief, and having an unpaid tax liability.

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The IRS will normally grant equitable relief if the tax was not paid when the joint return was filed, the requester is divorced or separated, the requester did not know that the tax would not be paid, and the requester would suffer undue hardship if the relief were not granted.

In other circumstances, the IRS will take into account additional factors in determining whether equitable relief should be granted. Those factors include marital status, hardship, spousal abuse, divorce decree obligations, and knowledge of the underpayment or understatement of tax.

Notice 98-61 gives the full text of the interim guidance, as well as specifics on how to submit comments. The notice will be available in the Tax Professional's Corner of the IRS Web site at *www.irs.ustreas.gov* and will be published in the Internal Revenue Bulletin 1998-51, dated December 21, 1998.

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